IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 2149 of 2003 (O&M)
DATE OF DECISION: 14.8.2007

Gurmukh Singh

…Petitioner

Versus

The Presiding Officer, Debts Recovery Tribunal, Chandigarh and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Ravi Malhotra, Advocate,
for the petitioner.

Mr. A.C. Jain, Advocate,
for respondent No. 2.

JUDGMENT

M.M. KUMAR, J.

The impugned order dated 6.1.2003 (P-3), passed by the Debts Recovery Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal') in Appeal No. 13/2002 in RC No. 299/2001, has reversed the order dated 11.4.2002, passed by the Recovery Officer (II), in the Recovery No. 299/1 – State Bank of India v. Dashmesh Brick Klin. The objections raised by the petitioner were dismissed by the Recovery Officer. Against the aforementioned order, appeal No. 13/202 was filed by the petitioner, which have upheld the order passed by the Recovery Officer on 11.4.2002. it is appropriate to mention that vide order dated 11.4.2002, the Recovery Officer has categorically held that the petitioner would be entitled

1/4th share from the auction money which may be realized and the auction was to take place as per the schedule.

Mr. A.C. Jain, learned counsel for respondent No. 2 has raised a preliminary objection that the order passed by the Tribunal, which is subject matter of challenge in this petition, is an appeal-able order under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for brevity, 'the Act'). According to the learned counsel this Court may not exercise jurisdiction under Article 226 of the Constitution in the face of the remedy of appeal available to the petitioner.

Mr. Ravi Malhotra, learned counsel for the petitioner has urged that remedy of appeal is not an efficacious remedy and this Court may exercise jurisdiction under Article 226 of the Constitution because his 1/4th share in the property is required to be protected rather than the 1/4th sale proceeds which are to be realized by auction.

Having heard learned counsel for the parties we are of the considered view that this is not a case where extra ordinary jurisdiction of this Court in preference to the remedy of appeal are required to be exercised. Therefore, we relegate the petitioner to the remedy of filing of an appeal under Section 20 of the Act. The objection with regard to limitation shall not be considered by the Tribunal in case appeal is filed within two weeks from today.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

August 14, 2007
Pkapoor